UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

COASTAL CARGO COMPANY, INC.

and **Case No. 15–CA–17862**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 270

***Joseph A. Hoffman, Jr., Esq.,* for the General Counsel.**
***Peyton S. Irby, Jr., Esq.,* for the Respondent.**
***William Lurye, Esq.,* for the Charging Party.**

BENCH DECISION

Statement of the Case

MICHAEL A. MARCIONESE, Administrative Law Judge. I heard this case in New Orleans, Louisiana, on June 12, 2006. International Brotherhood of Teamsters, Local Union No. 270 ("the Union") filed the charge on November 4, 2005[1] and amended it on November 23 and again on January 9, 2006. On March 31, 2006, the Board's General Counsel issued the complaint alleging that the Respondent, Coastal Cargo Company, Inc., violated Section 8(a)(1) and (5) of the Act by implementing changes in its employees' wages, hours and other terms and conditions of employment in the absence of a good-faith impasse in collective-bargaining negotiations with the Union.[2] The Respondent filed its answer to the complaint on April 14, 2006 denying that it committed the alleged unfair labor practices. In its answer, the Respondent conceded that it made certain changes to employees' terms and conditions of employment when it implemented its "last, best and final offer", but asserted that the parties had reached impasse before the proposal was implemented.

After hearing the testimony of the witnesses, reviewing the documentary evidence offered by the parties, and considering the arguments made by counsel in pre-trial memoranda and in closing arguments, I rendered a bench decision in accordance with Section 102.35(a)(10) of the Board's Rules and Regulations. For the reasons stated by me on the record, I found that the parties had not reached a good-faith impasse in negotiations when the Respondent implemented its last contract proposal on October 17 and that the changes resulting from the implementation violated Section 8(a)(1) and (5) of the Act, as alleged in the complaint. I also recommended dismissal of three paragraphs of the complaint that alleged specific changes in terms and conditions of employment for which there was no evidence to support the allegation.

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[1] All dates are in 2005 unless otherwise indicated.

[2] Counsel for the General Counsel amended the complaint at the hearing to withdraw one allegation regarding a specific change in employees' terms and conditions of employment.

I hereby certify the accuracy of the portion of the transcript, pages 113 through 135, containing my bench decision.[3] A copy of that portion of the transcript, as corrected, is attached to this decision as "Appendix A"

Conclusions of Law

1. By implementing its "last, best and final offer" on October 17, 2005, at a time when the Respondent and the Union had not reached a good-faith impasse in negotiations, the Respondent has failed to bargain in good faith with the Union and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. The Respondent did not make the specific unilateral changes to employees' terms and conditions of employment alleged at paragraphs 10(a), 10(f)(3) and 10(h) of the complaint.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that the Respondent be ordered to rescind any changes it made to employees' wages, hours and other terms and conditions of employment when it implemented its October 13 contract proposal on October 17 and to make whole any employees who lost wages or benefits as a result of the unilaterally implemented changes. I shall also recommend that the Respondent be ordered to bargain with the Union, upon request, on the terms of a new collective bargaining agreement to replace the expired agreement and to refrain from making any changes to employees' wages, hours and other terms and conditions of employment in the absence of agreement with the Union or a good-faith impasse in negotiations. Respondent shall also post a Notice to Employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Coastal Cargo Company, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the wages, hours, or other terms and conditions of employment

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[3] The following errors in the transcript are hereby corrected:

Page, line	delete	replace
118, ln 12	schedule	cancel
121, ln 1-2	actually contract	actually make counter-
134, ln 16	implement	rescind

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

of its employees in the bargaining unit represented by International Brotherhood of Teamsters, Local Union No. 270 (the Union).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind any changes made to employees' wages, hours, and other terms and conditions of employment, as reflected in the Respondent's Octobewr 13, 2005 contract proposal, that were implemented on and after October 17, 2005.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All checkers, lift drivers, loaders, flagmen, etc. employed at the Respondent's New Orleans, Louisiana and Pascagoula, Mississippi facilities excluding Company Supervisory Clerks, guards and supervisors as defined in the Act.

(c) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's implementation of its last contract proposal.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in New Orleans, Louisiana and Pascagoula, Mississippi, copies of the attached notice marked "Appendix B."[5] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 17, 2005.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint paragraphs 10 (a), 10(f)(3) and 10(h) are dismissed insofar as they allege violations of the Act not specifically found.

Dated, Washington, D.C., June 30, 2006.

Michael A. Marcionese
Administrative Law Judge

APPENDIX A

JUDGE MARCIONESE: Okay. Good afternoon, gentlemen. As I indicated before we took our lunch break, I had decided I would review my notes and consider the arguments, and then prepare a bench decision, and I am now prepared to do so.

Now, under the Board's rules and regulations, a bench decision is required to basically satisfy the same criteria requirements that a formal, written decision by an Administrative Law Judge, including certain necessary factual determinations that you would find in any typical ALJ decision, so I will go through a lot of this, which may seem somewhat technical, but these are the requirements of a formal decision.

(Whereupon, the bench decision in the above-entitled matter follows.)

BENCH DECISION

JUDGE MARCIONESE: Now, the charge in this case was filed by the Teamsters Local 270 on November 4, 2005, amended twice, November 23, 2005, and January 9, 2006, and Respondent in its answer has admitted the filing and service of the charge and the amended charges.

On March 31, 2006, based on the charges as amended, the General Counsel issued the complaint and notice of hearing that is before me, in which it is alleged that the Respondent, Coastal Cargo Company, Incorporated, violated Section 8(a)(1)

and (5) of the Act on October 17, 2005, by implementing its final contract proposal in the absence of a good-faith impasse in bargaining.

The complaint alleges that as a result of this implementation, Respondent made a number of specifically alleged changes to employees' wages, hours, and terms and conditions of employment. On April 12, 2006, the Respondent filed its answer to the complaint, denying that it committed the unfair labor practices alleged, while admitting that it, in fact, had implemented its last, best and final offer, quote/unquote, and that it changed employees' terms and conditions of employment.

The Respondent asserted affirmatively that it did so after the union members had unanimously rejected the offer. Respondent admitted making most of the specifically enumerated changes but did dispute several of the General Counsel's allegations.

Now, having now heard the testimony of the witnesses and reviewed the documentary evidence offered by the parties and after considering the arguments that were raised, both in the pretrial memoranda as well as in the closing arguments presented orally on the record, I am now prepared to issue my decision from the bench pursuant to Section 102.35(a)(10) of the Board's rules and regulations.

Now, with respect to jurisdiction, the Respondent has admitted all of the jurisdictional facts alleged by the General

Counsel and has also admitted that it is an employer engaged in commerce within the meaning of Section 2, paragraphs 2, 6, and 7 of the Act, and that the Charging Party is a labor organization within the meaning of Section 2, paragraph 5, of the Act. Based on these admissions, I make the following findings:

That at all material times, Respondent, a corporation with a place of business in New Orleans, Louisiana, herein called its facility, has been engaged in the longshoring and stevedoring industry;

That annually the Respondent, in conducting its business operations, derives gross revenues in excess of 50,000, for transportation of freight from the state of Louisiana directly to points outside the state;

And that in conducting its business operations, performs services valued in excess of $50,000 in states other than the state of Louisiana;

That in conducting its business operations within the state of Louisiana and that the Respondent derived gross revenues in excess of $50,000 for the transportation of freight and interstate commerce under arrangements with various common carriers, each of which operates between various states of the U.S.;

And that based on its operations, it functions as an essential link in the transportation of freight and interstate commerce;

And that annually Respondent, in conducting operations, purchases and receives at the New Orleans facility goods valued in excess of 50,000 directly from points outside the state of Louisiana.

Now, with respect to the specific unfair labor practices alleged in the complaint, many of the facts are undisputed, and based on the admissions and the answer that were filed by the Respondent or based on the testimony and other evidence that I've seen here today, there's no dispute that the union has been the recognized exclusive collective-bargaining agent of a unit of Respondent's employees since about 1985, within the meaning of Section 9(a) of the Act, and the unit is described in the complaint as consisting of all checkers, lift drivers, loaders, flagmen, et cetera, but excluding company supervisory clerks, guards, and supervisors as defined by the Act.

And it's also undisputed that the Respondent's recognition of the union has been evidenced by a series of collective-bargaining agreements and that the most recent one was in effect through September 30 of 2005.

It's also undisputed that the parties began bargaining for an agreement to succeed that last contract on August 16, 2005, and during the negotiations, the Respondent was represented by its executive vice president David Mannella, an admitted supervisor and agent within the meaning of the Act, and the union was represented by business agent Dave Negrotto. And both

Negrotto and Mannella have testified in the hearing here today. Essentially they're the only witnesses that I've heard testimony from, but there appears to be very little dispute about what happened at the various meetings and in the conversations, so that I don't find it necessary to make any credibility resolutions with respect to the testimony. And in any event, I saw nothing in the demeanor of either witness that would undermine their credibility.

I'll note that both witnesses, in trying to testify regarding the events that occurred last year were required to refer to their notes fairly often in order to refresh their recollection, rather than testifying independently from memory.

Now, the negotiations themselves consisted of a total of five meetings on August 16, August 22, September 22, September 27, and October 3, and several telephone conversations. Now, two of the meetings occurred before Hurricane Katrina, and three occurred afterwards. The evidence reveals that at the very first meeting, the union made its proposal, seeking essentially increases in wages and benefits for bargaining-unit employees, and all of the union's proposals were economic proposals.

At the next meeting on August 22, the Respondent presented a complete contract proposal which included some of the existing language in the contract, some new clauses that had not existed previously, changes in language, and some of the existing clauses, as well as economic proposals, many of which

essentially were for the status quo.

At this meeting, there's no dispute that the parties were making progress. They essentially began by going through each paragraph of the Respondent's proposal in order to determine where there was a change, if there was a change, and then after a break, the union went through and agreed to some of the proposals, most of which were essentially existing language, and the parties agreed with respect to most of the proposals, particularly economic ones, that they would look at those further and set those aside for now.

Unfortunately for everyone involved, Hurricane Katrina intervened, which caused the parties to cancel their next scheduled meeting for August 29, the day the hurricane arrived. And apparently the parties were unable to meet again until September 22, exactly one month from the previous meeting. And that meeting, because of the circumstances of the hurricane, ended up occurring away from the normal place of meeting, in fact, at an athletic club near the private residences of the two chief spokesmen, without either the union steward or the company's counsel being present.

And yet at this meeting, even though the parties had not even begun to discuss any of the economic proposals on the table, whether they be the union's economic proposals or the Respondent's economic proposals, the Respondent announced somewhat precipitously that it was going to present the union

with its, quote, last, best and final offer.

Now, the notes and the testimony of Negrotto, the union's business agent, which was not contradicted by the Respondent's representative, Mr. Mannella, show that the union, in fact, objected to the presentation of the last and final offer, and gave a series of reasons as to why it objected to this development in negotiations.

And essentially what Mr. Negrotto's notes from that meeting, which were not challenged, show is that he stated a number of difficulties he was having as a result of the hurricane, including having no mailing addresses, no phone, no meeting place to meet with his members, didn't even know where the membership was to get in contact with them, did not even have computers in the union's office, and didn't know who was remaining in the bargaining unit at that point in time.

Yet, nevertheless, when the parties met again on September 27, the Respondent again advised the union that it was going to be presenting it with its last, best and final offer.

Now, it's not clear from the record whether that offer was presented at that meeting on September 27, which apparently did occur at the company's premises, or whether, as the handwritten note on the proposal that was received and placed in evidence by the General Counsel, a note that was written by Mr. Negrotto, indicates that the actual proposal was delivered on September 28, the next day, when it was left with his wife at 5:00 p.m.

So -- but in any event, it's not really that significant, whether it was received at the meeting on the 27th or the next day on the 28th. And let's see. What is significant is that after this meeting and being presented, which essentially what was described as the last, best and final offer, the parties had really only one meeting and several telephone conversations in which to discuss the proposal.

And, again, as I noted previously, many of the proposals involved significant changes in employees' terms and conditions of employment which could be characterized as give-aways. Subsequent to that one meeting which occurred on October 3 and several telephone conversations, it is true that the Respondent did make some changes to what it had previously described as its last, best and final offer, including making some concessions to the union, and specifically, they increased the number of absences that would trigger discipline under a new absenteeism program that had not previously existed. They agreed to go back to a 50-50 split on the cost of arbitration, and they agreed to essentially keep their share of contributions to the health and welfare fund on behalf of unit employees at the existing level rather than requiring employees to assume 50 percent of the cost.

Now, it's also true -- there's no dispute about this -- that at the same time, while the Respondent was making these concessions, the union did not make any discernible moves from

its initial proposal. But its willingness to actually make counter-proposals is evidenced by its flexibility in dealing with the Respondent's proposal. Apparently it appears that from the time the Respondent made its complete contract proposal on September 22, the negotiations were essentially hijacked to focusing on that proposal rather than the few specifically enumerated economic changes that the union had sought in its initial proposal.

So I think in terms of the union's indicating its willingness to even discuss those proposals and to seek concessions on the proposals that the Respondent had made shows that it was flexible, notwithstanding not having made any formal counterproposals or moved off what it initially had presented on August 16.

Okay. The union ultimately did present the last, best and final offer, the one that was dated October 13 which had undergone some changes, including the concessions that I mentioned, as well as some clarifications of language to its membership, despite having stated its reservations about even having a vote under the current circumstances and its difficulties in tracking down bargaining-unit members and being able to communicate them.

And the evidence does indicate, too, that at the time that the union did hold this vote, based on information that was presented to it by the Respondent at one of -- at, I think, the

October 3 or maybe October 4 meeting, that maybe less than a majority of the bargaining-unit employees were actually physically back at work at the time that the union did, in fact, hold this membership meeting.

And there's no dispute that the membership did unanimously reject the Respondent's last, best and final offer, and that on October 14 after the vote, that Mr. Negrotto did communicate the results of the vote to the Respondent. And apparently after being told by the union that the membership for what it was at that time had, in fact, unanimously rejected the proposal, the Respondent made a decision to go ahead and implement that offer, and informed the union of this the following day, October 15, and, in fact, there's no dispute that the proposal was implemented the following Monday, October 17.

There's also -- at the same time, there is testimony from Mr. Negrotto that the next step in the process, after the vote on the proposal, would have been to conduct a strike vote among the membership, and that he, in fact, was in the process of arranging such a strike vote when the Respondent informed him that it was going to go ahead and implement the proposal, and he also testified that he informed Mr. Mannella that he was going to be holding a strike vote next. Nonetheless, the Respondent did go ahead and implement the proposal.

Now, there's no dispute that the union did not make any proposals after having told the Respondent that the membership

had rejected the last, best and final offer, nor is there any dispute that the union did not make any formal requests for further bargaining sessions after October 15, although Mr. Negrotto claims that he did indicate to Mr. Mannella that he and his steward would be available to meet any time. This I do not exactly interpret as a request for bargaining. Just indicating a willingness or being available at any time to meet is not the same as actually requesting a meeting.

Now, also fact-wise, other than the issue of impasse being in dispute, as I indicated previously, the Respondent in its answer did dispute some of the changes, specific changes, that the General Counsel alleged were implemented. Now, specifically with respect to paragraph 10, subparagraph (a), the General Counsel alleged that the Respondent changed its policy, allowing the Respondent to suspend, transfer, discharge or lay off casual employees for any lawful reason without recourse to the union.

The only basis for this allegation appears to be the fact that in the final offer that was conveyed to the union and presented to the membership to vote, that language was omitted from the article where it had existed in the previous contract, but, in fact, if one looks at the proposal, as well as the notes Mr. Negrotto had maintained at the meetings, all the Respondent did is it moved that language from where it previously had existed to Article 4, Section 2, in its proposal, and even the August 22 meeting notes show that the union had tentatively

agreed to the language being moved to Article 4.

So with respect to that allegation, there is no evidence that that, in fact, represented any change, and I would dismiss as to paragraph 10(a).

Similarly, with respect to paragraph 10(f) and 10(h), 10(f), subparagraph (3), which alleged the elimination of a ten-day period during which an employee may appeal a decision to discipline and a 15-day period during which Respondent must respond to an appeal, and 10(h) is eliminating a requirement that Respondent pay employees 30 minutes of travel time when employees must travel during mealtime, the allegation also seems to be based primarily on the omission of language that existed in the previous contract from the final offer.

There was certainly no evidence offered in this case to show that Respondent actually did, in fact, implement those two specific changes, that, in fact, you know, there was an elimination of a waiting -- of the appeal period, or that there was, in fact, any change in employees being paid for that time. So since there's no evidence to show an actual change other than the fact that the language appears or doesn't appear in the final offer, I would have to recommend dismissal with respect to those allegations.

Now, turning to the law as it applies to the facts in this case, the sole issue here is whether the parties had reached a good-faith impasse in negotiations by October 17, 2005, when

Respondent implemented its final offer. I note that the General Counsel does not allege in this case that the Respondent engaged in any overall bad-faith or surface bargaining, or that there were unremedied unfair labor practices that prevented the parties reaching a valid impasse.

Rather the General Counsel's argument is that notwithstanding the union's members having unanimously rejected the Respondent's final offer, the union had not yet -- the parties, the Respondent and the union, had not yet reached a point where further bargaining would be futile and where there was no realistic possibility that continuation of discussion would be fruitful, quoting from the Judge's decision in Bryant & Stratton Business Institute, 327 NLRB 1135 at page 1148, a case cited by the General Counsel in his memorandum.

Now, the Board and the Courts have routinely defined impasse in just those terms, and I'll refer the parties to not only Judge Fish's decision in Bryant & Stratton, but in the cases he cites in his decision, as well as the Board's decision in Cotter & Company, at 331 NLRB 787, another case cited by the General Counsel, although I would note that the District of Columbia Circuit Court did not enforce the portion of the Board's order in Cotter & Company finding an unfair labor practice, instead disagreeing with the Board that no impasse existed. The D.C. Circuit's decision is at 254 F. 3d 1105, and that's from 2001.

Now, perhaps the lead case on the issue of impasse is Taft Broadcasting Company, 163 NLRB 475, a 1967 decision, enforced by the District of Columbia Court of Appeals in 1968 under the name AFTRA versus NLRB, 395 F. 2d 622. In that case, the Board set forth a number of criteria or factors to consider in determining whether impasse exists, and these are essentially the factors that the Board and the Courts have looked at over the years.

In Taft, the Board said that, "whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed."

And I'll also note finally in terms of the legal precedent, that as pointed out by the General Counsel, the burden of proving the existence of an impasse rests with the party claiming impasse, which in this case would be the Respondent.

Now, looking at the factors cited by the Board in Taft and applying them to the facts here, essentially in terms of bargaining history, what we have here is a mature collective-bargaining relationship -- a rather long and mature collective-bargaining relationship in which the parties have bargained for

contracts over the years, and based on the testimony of Mr. Mannella, sometimes longer periods, other times shorter periods, and there was also some vague, unspecific evidence that, in fact, the most recent negotiations before these involved somewhat lengthy negotiations which resulted in a strike, and that many of the proposals, if not all of them, being advanced by the Respondent in this case were the same ones that had led to the strike in the prior case.

In terms of the good faith of the parties in negotiations, as I indicated previously, there is no allegation in this case that the Respondent engaged in any overall bad-faith bargaining in negotiations, although the union argues -- and I will address it later, that the way in which the Respondent handled the announcement and implementation of its final offer does indicate bad faith.

In terms of the length of the negotiations, admittedly they are shorter than one would normally expect, although, again, one has to consider that this is not a first contract between the parties. They're dealing with an established collective-bargaining relationship, established terms and conditions of employment, and generally where parties are used to dealing with one another, they may not need as many meetings in order to reach a point of deadlock.

But at the same time, what would sort of counteract that is that some of the proposals the Respondent was making here

would, in fact, change some terms and conditions of employment that had been established for a long time and that those types of negotiations and contentious issues might actually prolong what ordinarily would be a short period of negotiations.

In terms of the importance of the issue or issues as to which there is disagreement, clearly it appears there was disagreement over economic issues. The union had made proposals for significant increases. The Respondent was looking for either reductions in benefits, like the giving up of a holiday, change in the way overtime is calculated, or else maintaining economics at the status quo. Those are at the heart and core of collective bargaining, and obviously those issues are very important to the parties.

And then finally the contemporaneous understanding of the parties as to the state of negotiations, which is a somewhat difficult factor to analyze, because it essentially requires someone to sort of delve into the state of mind of people and see what is it that they're thinking at a particular point in time, and in this case, the Respondent's witness, Mr. Mannella, has indicated that at least in their point of view, they had reached a point where they felt that they could go no further and that the union was not going to make any further movement, and so that the parties were, in fact, deadlocked, and further discussions would have been futile.

At the same time, Mr. Negrotto testified that he did not

feel that the union was at a point where they had reached the end of their rope in terms of negotiations and that there was a willingness to continue bargaining. Of course, generally what's important is to look for objective evidence that would support either of those statements as to a party's particular state of mind at a given point in time, rather than having to rely upon a bald assertion one way or another as to whether either party was willing to make a concession or be flexible, because as the Board has indicated, if even one party has indicated that it is willing to make concessions, even if they might not seem very significant, as long as they are with respect to a significant issue, then you can't have an impasse.

Now, in doing my research prior to this, I came across a couple of cases which would seem to suggest the absence of an impasse in this particular case. I'll cite Civil Motor Inns, trading as Downtown Holiday Inn, New Haven, 300 NLRB 774, at page 776, and I'm intimately familiar with that case since when I was counsel for the General Counsel years ago, I litigated that case.

And another case is Rochester Telephone, 333 NLRB 30, a 2001 case, at footnote 3, where the Board indicated, although they found there was an impasse there, they did indicate in the footnote that you cannot have impasse where one party makes a concession that is not trivial or meaningless, over an issue that is of significance to either party.

Now, in that case -- both those cases actually, Downtown Holiday Inn and Rochester Telephone, what the Board and the Judges relied upon is essentially the absence of any significant concession made by the union to a final proposal made by an employer. But I think at least in Downtown Holiday Inn, my recollection, the main issue there was whether an impasse had been broken. There was already no dispute that the parties had been at impasse. There was a lengthy hiatus, and a question was whether a union's overtures to the employer seeking to resume negotiations were sufficient to break the impasse.

So those are the cases that I've considered, the cases cited by the parties, as well as those that I found myself, and as both the Board and the Courts have noted, impasse is really a question that has to be decided based on the facts and circumstances of the particular case at issue. There's really no way to essentially set forth a hard and fast rule as to whether, you know, in these circumstances you're going to find impasse or not. You have to look at the facts as presented in the hearing.

Now, here, while the union's rejection of what Respondent had described as its last, best and final offer, without any objective evidence of a willingness to make further movement, under normal circumstances would establish the existence of impasse based on Rochester Telephone and Downtown Holiday Inn. Here, I think the unique circumstances that the parties were

operating under leads me to the conclusion that the parties could not have been at impasse on October 17.

And particularly what I'm focusing on and what I think is very significant here is the intervention of Mother Nature and the impact that Hurricane Katrina had, not only on the parties but on the bargaining unit itself. The parties had not reached the point of futility. Before the hurricane struck, they had really only barely begun to discuss the Respondent's extensive contract proposal, including a number of very significant economic issues, some of which would have resulted in a decline in the employees' wages and benefits.

And it appears from the evidence what Respondent did is when the storm had passed and the parties decided to try to get back into negotiations, it elected to take advantage of this situation, the dispersal of the bargaining unit, the difficulties that the union was having in terms of just operating and functioning in its office, to implement significant changes in employees' terms and conditions of employment, before the parties had really even had an opportunity to discuss them seriously or at any length.

And essentially I see this as an attempt by the Respondent to get something that they could not have achieved at the bargaining table, if the union had been at full strength and in a position to meaningfully oppose the proposals that the Respondent was making.

And, again, the unanimous vote that the parties have referred to is really not even a meaningful one, when one considers that a large number of employees in the bargaining unit were not even apparently reachable or accessible in order to participate in the vote at the time that the Respondent essentially forced the union to hold a vote of its membership.

And also, too, moreover I also note that although the union may not have come back following that vote with any counterproposal to the Respondent's offer, there is some evidence that the union did not believe that it was at impasse, other than just the bald testimony of Mr. Negrotto. As indicated previously, there was still a step to be followed by the union after the vote on the contract, which would be the strike vote. So until the union had actually gone about the process of having a strike vote, it really was not in a position to say that further bargaining would be fruitless or even to fashion a counterproposal.

Obviously the strike vote would be important to the union in being able to gauge the strength of the employees' feelings towards rejection of the proposals that the Respondent had made. If the employees had voted not to strike, then that certainly would have been an indication to the union that maybe further bargaining would be helpful, and counterproposal could have been made with input from the membership. But the Respondent did not await the outcome of a strike vote but instead chose to

implement the proposal immediately upon learning of the vote to reject it.

Finally, I also note that, as I indicated previously, the evidence of what took place in the meeting of -- the last face-to-face meeting before the storm on August 22, where there was the give and take that one would expect to find in negotiations, where the parties went through the proposals, paragraph by paragraph, with the union indicating either agreement or disagreement, and the parties suggesting that they would look at economic items later, suggests that there was still room for movement from the parties, that they had not exhausted all possibilities of agreement, and that further meetings with a real give and take on economic issues, a very paramount concern to all parties, could actually have resulted in further movement.

And also one other case that I will cite is the D.C. Liquor Wholesalers case, which is at 292 NLRB 1234, a 1989 decision, enforced by the D.C. Court of Appeals at 924 F. 2d, 1078 (1991), where the Board essentially viewed facts as indicating that the Respondent was imposing basically -- unilaterally limiting the amount of discussion that could be had over its last and final offer, and depriving the union of the opportunity to full negotiate over that before declaring impasse and implementing a lockout.

And here, I think because of the impact and the

intervention of the hurricane and the effect that had on the lives of the bargaining-unit employees, as well as the negotiators themselves and the operation of the union's business and the company's business, the parties really had not had an adequate opportunity to negotiate in good faith the significant economic proposals that were being advanced by the Respondent.

Accordingly, based on the above, I find the parties were not at a good-faith impasse on October 17, 2005, and that therefore the Respondent's implementation of its October 13 last, best and final offer violated Section 8(a)(1) and (5) of the Act as alleged by the General Counsel, with the exceptions as to those specific changes that I found insufficient evidence of.

I will recommend to the Board that it issue an order to remedy these unfair labor practices that will require the Respondent to rescind any of the changes that it has implemented as a result on October 17, 2005, and to bargain in good faith upon request with the union, maintaining the terms and conditions of employment that existed before the change, until such time as the parties have had an opportunity to bargain in good faith to either a full agreement or a lawful impasse.

Now, at this point, what I will do under the Board's rules and regulations, I am required to await receipt of the transcript. Then I will issue an order, certifying those

portions of the transcript pages containing my bench decision, and that will be -- and I will also include in there basically a full recommended order with the remedial provisions, so that the parties will have that.

At that point, once you receive that decision and the recommended order, all parties have the opportunity to take exceptions to any of my findings of fact, conclusions of law, any rulings I have made at the hearing here today, and I will refer you to the statement of standard procedures in the Board's rules and regulations with respect to the procedure for filing exceptions with the Board in Washington.

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT unilaterally make changes to your wages, hours, or other terms and conditions of employment without bargaining to agreement or good-faith impasse with your Union, the International Brotherhood of Teamsters, Local Union No. 270 (the Union).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the changes we made to your wages, hours and other terms and conditions of employment when we implemented our last offer on October 17, 2005.

WE WILL make you whole for any lost wages and benefits that resulted from the unlawful unilateral changes we made.

WE WILL, upon request, bargain with your Union concerning your terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

COASTAL CARGO COMPANY, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1515 Poydras Street, Room 610

New Orleans, Louisiana 70112-3723

Hours: 8 a.m. to 4:30 p.m.

504-589-6361.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 504-589-6389.